

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 CORNELE A. OVERSTREET,

5 Plaintiff,

6 v.

7 APEX LINEN SERVICE, INC.,

8 Defendant.
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Case No. 2:17-cv-02923-APG-CWH

**ORDER DENYING EMERGENCY
MOITION TO STAY AND FOR
RECONSIDERATION**

(ECF Nos. 34, 36, 37)

10 Defendant Apex Linen Service, Inc. moves for a stay and reconsideration of the portion of
11 my preliminary injunction order (ECF No. 31) requiring Apex to offer reinstatement to three
12 terminated employees: Adam Arellano, Charles Walker, and Joseph Servin. I deny those
13 motions.

14 Apex contends it was denied due process because I decided the matter on the papers and
15 gave only limited time for oral argument at the hearing. This argument is frivolous. Apex agreed
16 to resolve the matter on the papers at the January 5, 2018 hearing. ECF No. 23. Additionally, the
17 hearing lasted an hour and Apex did not request additional time for argument. Indeed, I asked
18 Apex's counsel whether there was anything further, and she said there was nothing further, except
19 to point out there was a pending motion to dismiss. Finally, I granted Apex's request to
20 supplement the record, which Apex did. *See* ECF No. 30.

21 Apex's arguments on the merits are disagreements with my evaluation of the evidence
22 presented and my application of that evidence to the standard for granting an injunction under
23 § 10(j) of the National Labor Relations Act. Nothing Apex presents suggests an evidentiary
24 hearing would produce a different outcome. Moreover, Apex disclaimed at the January 5 hearing
25 that an evidentiary hearing was necessary, and requests one now only because it does not agree
26 with my ruling.

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1 Apex contends I should stay the reinstatement portion of my order pending a decision by
2 the Administrative Law Judge. But that ignores the purpose of a § 10(j) injunction, which is
3 designed “to protect the integrity of the collective bargaining process and to preserve the
4 [NLRB’s] remedial power while it processes the charge.” *Small v. Avanti Health Sys., LLC*, 661
5 F.3d 1180, 1187 (9th Cir. 2011) (quotation omitted). As I stated in my prior order, the remedy is
6 meant to prevent someone from accomplishing an unlawful objective based on the delay between
7 the unfair labor practice and final resolution of the complaint process. *See Miller for & on Behalf*
8 *of N.L.R.B. v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 455 n.3 (9th Cir. 1994) (en banc).

9 Finally, I do not find that the possibility of a decertification vote warrants staying or
10 reconsidering my order. There is no evidence the engineers have voted to decertify the union.
11 The mere possibility does not warrant relief. Moreover, Apex has presented no authority for the
12 proposition that a decertification vote would void relief awarded to remedy prior alleged unfair
13 labor practices while the union was representing the bargaining unit.

14 IT IS THEREFORE ORDERED that defendant Apex Linen Service, Inc.’s emergency
15 motions to stay and reconsider (**ECF Nos. 34, 36, 37**) are **DENIED**.

16 DATED this 22nd day of February, 2018.

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20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE
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